IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Criminal Revision No. 588/2001
(Old No. 202/1984)

Azimuddin son of Nizamuddin,

R/o Sarkara, P.S. Bajpur,

District Nainital …..Appellant.

Vs.

State …..Respondent.

Sri Sayed Nadim Advocate learned counsel for the revisionist.

Learned A.G.A. for the respondent.

Date: 22-12-2003

ORAL JUDGMENT (**Per: Irshad Hussain, J.)**

This is a criminal revision under section 397/401 of the Code of Criminal Procedure, 1973 against the judgment and order dated 13-1-1984 passed by the then Additional Sessions Judge, Nainital in criminal appeal no. 90 of 1983, maintaining the conviction of the revisionist and sentence of one year's R.I. and a fine of Rs. 2000/- under section 7/16 of the Prevention of Food Adulteration Act, 1954 (for short 'the Act').

2- Briefly stated the case of the prosecution was that on 29-8-1982 at about 8-30 a.m. revisionist was carrying 13 liters of cow-buffalo milk for sale. Food Inspector Sri K.C. Pant (P.W.1) met him in the market of Bajpur district, Nainital and purchased 660 M.L. of milk for sample on payment of its price of Rs. 1.50 vide receipt (Ext. Ka.2). Notice to the revisionist was given in form – VI (Ext. Ka.1) by the Food Inspector. The milk was divided in three parts and was kept in separate phials to which 18 drops each of formalin was added. The phials were sealed as per rules and labels in prescribed form (Ext. Ka.3) were pasted on the phials. Food Inspector tried to procure the witnesses but none agreed and therefore the endorsement to this effect was make on the receipt and spot note (Ext. Ka.4). Thumb impression of the revisionist was obtained on these documents. One of the sample phial was sent of Public Analyst, Lucknow together with memorandum form –VII (Ext. Ka.5) and the other two phials were sent to Local (Health) Authority. Public Analyst gave his report

dated 6-10-1982 (Ext. Ka.8) to the effect that the milk was not deficient in fatty contents but was deficient in not-fatty solids by 22%. The milk thus was found adulterated and after obtaining the required sanction dated 4.12.1982 (Ext. Ka.10) the written complaint (Ext. Ka. 11) was filed on 20-12-1982. The revisionist pleaded not guilty and contented that he has been falsely implicated in the case.

3- In the trial before the learned Magistrate prosecution examined two witnesses, Food Inspector K.C.Pant (P.W.1) and a clerk of the office of C.M.O. D.S.Negi (P.W.2). The learned Magistrate on consideration of the evidence found the revisionist guilty of the charge leveled against him and he was accordingly convicted and sentenced to undergo R.I. for one year and a fine of Rs. 2000/- under section 7/16 of 'the Act' per judgment and order dated 14-3-1983. Appeal against this judgment was dismissed as stated above and therefore this revision was preferred.

4- Learned counsel for the revisionist argued that there was no compliance of the mandatory provision of section 10(7) of 'the Act; in as much as no public witness was taken by the food Inspector when the sample was allegedly taken from the revisionist. Food Inspector, K.C.Pant (P.W.1) gave out that he had requested the shop-keepers of the vicinity to be witness of the taking of the sample from the revisionist but none had agreed. He has made endorsement to this effect on the relevant documents referred above. Learned counsel submitted that the Food Inspector failed to tell the name of any of the shop-keepers and therefore his evidence is shaky and discrepant and need to be disbelieved. Similar argument was advanced before the learned Magistrate and the appellate court but was repelled with the observation that mere non-mentioning of the name of the shop-keeper would not entail rejection of the evidence of the witness. I see no reason to disagree with the said reason and in the totality of the circumstances of the case the evidence of Food Inspector can not safely be disbelieved. In other words there was compliance of provision of section 10(7) of 'the Act' in this case.

5- Referring to the report of the Public Analyst (Ext.Ka.8) learned counsel argued that presence of required percentage of milk fact and deficiency only of non-fatty solids in the milk sample indicate that at the time of taking of the sample the milk was not made homogeneous by stirring with a long handle dipper and that in the face of these facts the sample can not be held to be adulterated. Again the argument is without force because the Food Inspector

gave definite statement that the sample was taken after the milk container was duly shaken. By doing so the milk in the container had become homogenous and therefore it can not safely be accepted that the result of the analysis got effected in giving incorrect percentage of the ingredients of the milk. In the face of these facts the decisions reported in the matter of **State of Rajasthan Vs. Kachab; 1979 All India Prevention of Food Adulteration Journal (Rajasthan High Court)-471** and in the matter of **State of H.P. Vs. Yusuf; 2002 FAJ (Himanchal Pradesh High Court)-94** relied upon by the learned counsel have no application here.

6- It was also argued that since the sample was deficient in non-fatty solids only it will not necessarily mean that the milk was adulterated. To support his argument learned counsel placed reliance on the reported decision of **Ramswarup Vs. State;1979 All India Prevention of Food Adulteration Journal (Allahabad High Court)-86 .** The facts of the reported case were at variance because it was noticed that the sample was also sent to Director of Central Food Laboratory, Calcutta which had examined it after about two years and three months and it was also noticed that the chances of deterioration of the sample were great and correct result could not have been possible. Consequently the reported decision can not be of any held to the cause of the revisionist in regard to the compliance of the provision of section 13(2) of 'the Act' was not proved. The learned trial court also rightly repelled the argument of the defence in that regard.

7- The notice with the Public Analyst's report was sent to the revisionist on 28-12-1982. Copy of the notice (Ext. Ka.12) was signed by C.M.O./Local (Health)Authority, Nainital. On that day according to the Food Inspector Sri Y.K. Bhushan was the C.M.O. Nainital. However, on notice, Ext.Ka.12 signatures of Dr. N.M.Aggarwal have been identified by him and pointing out to his infirmity learned counsel argued that the notice was not sent by the competent authority. It has been held above that the notice with Public Analyst's report was sent to the revisionist and even if some other officer had signed on the notice Ext.Ka.12 it would not mean that the revisionist was prejudice in his defence. As stated above the revisionist had not applied for the sending another sample to Central Food Laboratory and therefore no prejudice having been caused the pointed infirmity, if any, has not effect on the credibility of the prosecution version and its evidence. In other words the

evidence was reliable and sufficient to prove the charge leveled against the revisionist.

8- Lastly the learned counsel submitted that the sample was taken on 29-8-1982 and the judgment by the learned Magistrate was delivered on 14-3-1983 and thereafter the appeal was decided on 13.1.1984 but the present revision came up for hearing and disposal after 19 years and considering the long delay, minimum sentence need not be awarded to meet the ends of justice which require speedy trial and conclude decision in criminal matters. Learned counsel also argued that the revisionist is not reported to have been involved in any criminal activity thereafter and the courts have all along been taking lenient view under such circumstances even if minimum sentence is prescribed for an offence under 'the Act'. Learned counsel also pressed into service the decision of the Apex Court in **Municipal Corporation of Delhi Vs. Tek Chand Bhatia; AIR 1980 S.C. 360** and also a decision of the High Court of Allahabad in the case of **Kishori Lal Vs. State of U.P.; 2000(2) JIC 741(Allahabad)**. I have perused the reported decisions and having considered the long delay caused in the disposal of the case finally during which the revisionist had been in agony and must have been having a feeling of repentance , it will be just and proper to reduce the sentence of the revisionist to the period already undergone but to enhance the fine to a sum of Rs.4000/- instead of Rs. 2000/- imposed by the trial Magistrate.

9- For the reasons aforesaid the revision is partly allowed. The revisionist Azimuddin is convicted and sentenced to the period already undergone and to pay a fine of Rs. 4000/-(four thousand) under section 7/16 of 'the Act'. In default of payment of fine he shall suffer R.I. for 6 (six) months.

10- Let the record be sent back to the learned Magistrate for compliance. Compliance report be submitted within one month.

(Irshad Hussain, J.)

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